

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                            |   |                                   |
|----------------------------|---|-----------------------------------|
| SCOTT TOELK a/k/a          | : |                                   |
| SCOTT DIDONATO             | : |                                   |
| and                        | : |                                   |
| RICHARD TOELK              | : | CIVIL ACTION NO. : <b>09-5630</b> |
| and                        | : |                                   |
| VERONICA TOELK-GARBARINO   | : |                                   |
|                            | : |                                   |
| v.                         | : |                                   |
|                            | : |                                   |
| PAUL MORRISSEY             | : |                                   |
| and                        | : |                                   |
| ANDY WARHOL FOUNDATION FOR | : |                                   |
| THE VISUAL ARTS, INC.      | : |                                   |
| and                        | : |                                   |
| IMAGE ENTERTAINMENT, INC.  | : |                                   |
| and                        | : |                                   |
| SCORE-SARX COMPANY         | : |                                   |

**PLAINTIFFS' RESPONSE TO DEFENDANT,**  
**ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS, INC.'S**  
**MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

The Plaintiffs hereby respond to Defendant, Andy Warhol Foundation for the Visual Arts, Inc.'s Motion to Dismiss the Second Amended Complaint as follows: While the Second Amended Complaint is couched in contractual terms. The declarations supplied by Defendant, Paul Morrissey, does not set forth the relationship between Defendant, Morrissey and Defendant, Warhol Foundation pertaining to the sale and marketing of the films or whether the foundation had any financial position or contractual position other than giving permission to use the name, "Andy Warhol Presents". When the Complaint was prepared, it was drafted in a way based upon the information provided and obtained which was the use of the title "Andy Warhol Presents" on the covers of the films that Paul Morrissey produced, directed and wrote.

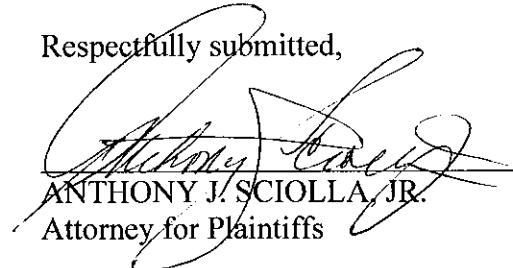
The Plaintiffs, later on, obtained the death certificate for their late father and learned that no estate had ever been opened in his name. An estate has recently been opened and the Plaintiffs sought to withdraw their lawsuit so that the new entity, being the Estate of Richard Toelk could, appropriately file suit on the estate's behalf. It should be noted that the late Richard Toelk was a long time resident of Philadelphia, PA, having moved here, worked here, got married and raised a family here.

It is the Plaintiffs' contention that their late father was not aware of the contractual side of appearing and/or acting in the Morrissey film and/or films.

After careful evaluation of the documentation, especially the documents supplied by Defendant, Morrissey and his counsel, the Plaintiffs decided to withdraw their lawsuit without prejudice.

WHEREFORE, Plaintiffs request this Honorable Court to grant the Order for Voluntary Dismissal without prejudice.

Respectfully submitted,



ANTHONY J. SCIOLLA, JR.  
Attorney for Plaintiffs

Date:

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| and                        | : |                                   |
| SCORE-SARX COMPANY         | : |                                   |

PLAINTIFFS' MEMORANDUM OF LAW  
IN SUPPORT OF PLAINTIFFS' RESPONSE  
TO DEFENDANT, ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.'S  
MOTION TO DISMISS SECOND AMENDED COMPLAINT

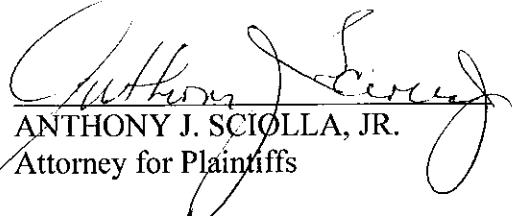
The Plaintiffs, who initiated the lawsuit against the Defendants in this matter, amended the lawsuit based upon information and documentation provided by Defendant, Paul Morrissey and counsel, which allowed them to review their positions and decide to voluntarily withdraw their Complaint. This was the decision of the three Plaintiffs. With that in mind, the Plaintiffs understand and went to further investigate and did locate the original death certificate for their father. The Plaintiffs have now opened an Estate in Philadelphia, PA where he died.

The Plaintiffs' father, who was a resident of Philadelphia, got married and raised a family in Philadelphia up until the time he passed away in 1990.

It should be noted that being of such young age, the late Richard Toelk had no knowledge of what he was getting into when working for Defendant, Paul Morrissey.

WHEREFORE, Plaintiff requests that this Honorable Court grant permission for Plaintiffs to withdraw their cause of action under docket no.: 09-5630, without prejudice.

Respectfully submitted,

  
ANTHONY J. SCIOLLA, JR.  
Attorney for Plaintiffs

C:\Data\AJSciolla\TOELK-DIDONATO\ANDY WARHOL 6479.003\RESPONSE TO DEFENDANT, ANDY WARHOL'S  
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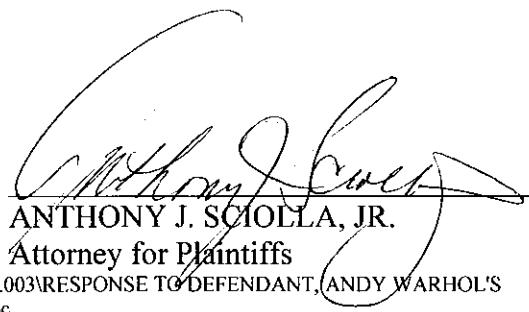
**CERTIFICATE OF SERVICE**

I, ANTHONY J. SCIOLLA, JR., ESQUIRE, hereby certify that a true and correct copy of Plaintiffs' Response to Defendant, Andy Warhol Foundation for the Visual Arts, Inc.'s Motion to Dismiss the Second Amended Complaint was served upon the following attorneys for the Defendants, via first class U.S. regular mail, at the below addresses, on May 4<sup>th</sup>, 2010:

Robert C. Heim, Esquire  
Dechert, LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808

Aaron M. Zeisler, Esquire  
Satterlee, Stephens, Burke & Burke, LLP  
230 Park Avenue  
New York, NY 10169

Matthew J. Borger, Esquire  
Klehr, Harrison, Harvey & Branzburg, LLP  
1835 Market Street  
Philadelphia, PA 19103

  
ANTHONY J. SCIOLLA, JR.  
Attorney for Plaintiffs